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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

WALTERS, JOHN DANIEL

ART UNIT PAPER NUMBER

3618

DATE MAILED: 11/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,262

Applicant(s)

HARMER ET AL.

Examiner

John D. Walters

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3,4,7,8 and 13 is/are allowed.
- 6) ☒ Claim(s) 2,5,6,9-12 and 14-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 August 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Previous claims 1 – 13 have been examined. New claims 14 – 17 have been examined.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “guiding portion” and the “flank portion” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner,

the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- Claim 16 lists physical structures, i.e. guiding portion and flank portion, which are not described or disclosed in the specification.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- Claim 16 lists various “components” of the sulky side rails. These components, most specifically “guiding portion” and “flank portion”, are not suitably described in the specification or show in the drawing figures.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Gaines, et al. (3,103,369). Gaines discloses a wheel assembly comprising:

- a wheel having two sides, a set of tubular spokes, and a rim (Fig. 1);
- a pair of substantially planar covers (Fig. 2, items 15 and 16);
- wherein said covers are mounted to said wheel, via fasteners (Fig. 2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over king (4,033,598). King discloses a sulky comprising:

- a generally tubular arch having two ends (Fig. 5, items 20, 21, and 22);
- a seat mounted to said arch (Fig. 1, item 30);

- a pair of strut assemblies depending downwardly from opposite ends of said arch (Fig. 5, items 18 and 19);
- wherein said strut assemblies receive a wheel (Fig. 5, items 14 and 16);
- a pair of rails mounted on said arch (Fig. 1, items 36 and 38).

King fails to explicitly state that the arch and said strut assemblies are positioned for substantially longitudinal alignment of said wheels before welding. King notes (column 3, lines 31 – 33) that said arch and said strut assemblies are welded to each other. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to align the wheels of the sulky before welding the arch to the struts of King. Should such an operation not be preformed during the manufacturing process, the sulky would not run true, and thereby be made unsuitable for it's intended purpose.

Claims 5, 6, and 14 – 17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Stein et al. (6,095,536) in view of WO 93/19969. Stein discloses a sulky comprising:

- a pair of laterally spaced wheels (Fig 1, item 52) mounted generally at opposite ends of a tubular arch (Fig. 1, item 36);
- a seat mounted to said arch between said wheels (Fig. 1, item 42);
- a first rail and a second rail extending from each side of said arch (Fig 2);
- wherein a portion of said first and said second rails, proximate to said arch, angle towards a center line (Fig. 2, item 28);
- wherein said angle is about 15° (Fig. 2);

- wherein each of said rails includes a second portion extending forwardly from said angled portion which is generally parallel to a wheel center line (Fig. 2, item 30) and a second angled portion extending forward from said second portion which is angles towards said center line (Fig. 2, item 32);
- wherein a stirrup is located on each said second portions behind each said second angled portions (Fig. 2, item 35);
- a generally longitudinal harnessing portion (Fig. 1, item 16).

Stein fails to teach that a wheel center line and a horse center line are to be offset from one another. WO 93/19969, however, discloses a sulky comprising:

- a wheel center line offset from a horse center line (Fig. 2).

In regards to claim 6, figure 2 of Stein shows the angle formed by the first angled portion and the second portion. Geometry would indicate that the first angled portion is 10° from perpendicular to the tubular arch.

It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the offset center lines of WO 93/19969 with the sulky of Stein in order to allow said sulky to be made shorter, thereby improving speed, while allowing the horse to not contact the "outboard" wheel when rounding a turn on a race track (WO 93/19969 - page 5, line 25 to page 6 line 2).

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gaines et al. (3,103,369) and further in view of Stein et al. (6,095,536). Gaines discloses a wheel assembly comprising:

Art Unit: 3618

- a wheel having two sides, a set of tubular spokes, and a rim (Fig. 1);
- a pair of substantially planar covers (Fig. 2, items 15 and 16);
- wherein said covers are mounted to said wheel, via other components (Fig. 2).

Gaines fails to disclose the structure of the sulky beyond the "wheel area". Stein, however, discloses a sulky comprising:

- a pair of laterally spaced wheels (Fig 1, item 52) mounted generally at opposite ends of a tubular arch (Fig. 1, item 36);
- a seat mounted to said arch between said wheels (Fig. 1, item 42);
- a first rail and a second rail extending from each side of said arch (Fig 2);
- wherein a portion of said second rail proximate to said arch angles towards a center line (Fig. 2, item 28).

As Gaines does not disclose a sulky structure beyond the "wheel area" it is necessary that a sulky structure be added, therefore, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to combine the wheel assembly structure of Gaines with the sulky structure of Stein in order to create a vehicle with all necessary components for operation.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gaines et al. (3,103,369). Gaines discloses a wheel assembly as described above. Gaines does not disclose the use of hook and loop fasteners. He does, however, cite the use of "fasteners". It is common knowledge that hook and loop fasteners can be used in place of other fasteners such as buttons, zippers, snaps. Therefore, It would have been

Art Unit: 3618

obvious to one of ordinary skill in the art at the time of applicant's invention to affix the covers of Gaines to said wheels with hook and loop fasteners.

Response to Arguments

Applicant's arguments, see page 10, filed 8/18/05, with respect to the specification have been fully considered and are persuasive. The objection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 11, filed 8/18/05, with respect to the drawings have been fully considered and are persuasive. The objection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 11, filed 8/18/05, with respect to claims 7 and 12 have been fully considered and are persuasive. The objection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 11, filed 8/18/05, with respect to the 112, 1st paragraph rejection of claim 1 have been fully considered and are persuasive. The rejection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 12, filed 8/18/05, with respect to the 112, 2nd paragraph rejection of claims 1 and 2 have been fully considered and are persuasive. The rejection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 13, filed 8/18/05, with respect to the 103(a) rejection of claim 3 have been fully considered and are persuasive. The rejection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 18, filed 8/18/05, with respect to the objection to claim 4 have been fully considered and are persuasive. The objection of 5/17/05 has been withdrawn.

Applicant's arguments, see page 18, filed 8/18/05, with respect to the double patenting rejection of claims 5 - 8 have been fully considered and are persuasive. The rejection of 5/17/05 has been withdrawn.

Applicant's arguments filed 8/18/05 have been fully considered but they are not persuasive in regards to the rejections under 35 U.S.C. § 102 to claims 10 and 11, and to the rejections under 35 U.S.C. § 103 to claims 2, 5, 6, 9, and 12.

In regards to claims 10 and 11, Applicant states that Gaines does not disclose a pair of wheel covers, which are mounted to the wheel. Figure 2 of Gaines shows two plainer wheel covers (items 15 and 16), which are attached to the outer races of the

wheel bearings. Said wheel bearings are part of the wheel and, as such, said wheel covers are attached to the wheel. Claim 10 states that the wheel covers "substantially" cover the spokes, i.e. cover to a great or significant extent. Figure 1 of Gaines shows the spokes being covered to a significant extent by said covers. Claim 11 recites the limitation of the use of fasteners to attach said covers. Figure 2 of Gaines shows fasteners 20 and 21 attaching said cover to said wheel/wheel bearings. For these reasons, the rejection stands.

In regards to claim 2, Applicant states that "No other reference is cited to supply this teaching..." of longitudinal alignment of struts before welding. As stated in the previous rejection, it would be obvious that said alignment would take place before welding to allow for true running of said sulky. As Applicant does not address this point, the rejection stands.

In regards to claims 5 and 6, Applicant states that "...neither reference...teaches or suggests and offset racing sulky...references cannot properly be combined in the absence of a clear teaching...the suggestion comes only from Applicant's disclosure...". As stated in the previous rejection, WO 93/19969 teaches that it is advantageous for a variety of reasons to manufacture a sulky rail which angles inward causing an offset center line (page 5, line 25 to page 6 line 2). While the Office appreciates the information provided by Applicant in the Rule 132 Declaration, it does not overcome the rejection based on the prior art. Claim 6 states that a rail portion is angled at about 15°. Looking at figure 2 of Stein, the rail portion is angled at 10°, based on a geometric

analysis. The qualifier of "about" in the claim allows for prior art of angles near 15° to be used. For these reasons, the rejection stands.

In regards to claim 9, see reply to claims 10 and 11 above.

In regards to claim 12, Applicant does not traverse Examiner's statement of Official Notice of the interchangeability of hook and loop fasteners with other types of fastener, and as such it is now considered Common Knowledge. Applicant states that the teachings fail to disclose that "...in the sulky racing environment...time between races is short...it is beneficial to have equipment that is easily and quickly disassembled." This statement relates to the intended use of said structure and not to any distinguishing physical differences. In addition, claim 12 contains no language addressing the removability of said covers or the speed with which said covers could be removed. For these reasons, the rejection stands.

Allowable Subject Matter

Claims 1, 3, 4, 7, 8, and 13 are allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

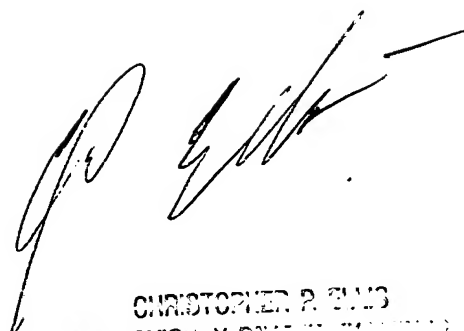
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John D. Walters whose telephone number is (571) 272-8269. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John D. Walters
Examiner
Art Unit 3618

JDW



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